

STATE OF MICHIGAN
COURT OF APPEALS

IRENE KAHLER and TIMOTHY KAHLER,

Plaintiffs-Appellants,

v

RENT-A-CENTER and MIDWEST, INC.,

Defendants-Appellees.

UNPUBLISHED

October 14, 2010

No. 293168

Kalamazoo Circuit Court

LC No. 2008-000449-NO

Before: ZAHRA, P.J., and TALBOT and METER, JJ.

PER CURIAM.

Plaintiff¹ appeals as of right from the trial court's orders granting defendants' motions for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff fell down steps in a store leased by defendant Rent-a-Center and owned by defendant Midwest, Inc. She filed suit, alleging that because the steps lacked a handrail and a handrail was required by the International Building Code, adopted by reference in MCL 125.1504(2), there was a statutory violation and the "open and obvious danger" doctrine did not preclude a finding of negligence. The trial court, citing *Summers v Detroit*, 206 Mich App 46; 520 NW2d 356 (1994), and *O'Donnell v Garasic*, 259 Mich App 569; 676 NW2d 213 (2003), abrogated in part by *Mullen v Zerfas*, 480 Mich 989; 742 NW2d 114 (2007), found that the case law controlled and that the claimed code violation did not, by itself, impose a legal duty.²

¹ The claim of plaintiff Timothy Kahler is derivative; "plaintiff" in this opinion refers to Irene Kahler.

² The court also found that the condition was open and obvious and that there existed no special aspects giving rise to an unreasonable risk of harm. Plaintiff has not here challenged the trial court's ruling on the common-law premises liability issues; we address only the issue regarding whether defendants had a statutory duty independent of common law.

We review de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Also, statutory interpretation is a question of law that we consider de novo on appeal. *Detroit v Ambassador Bridge Co*, 481 Mich 29, 35; 748 NW2d 221 (2008). "Whether a defendant owes a plaintiff a duty of care is a question of law for the court." *Beaudrie v Henderson*, 465 Mich 124, 130; 631 NW2d 308 (2001).

The open and obvious danger doctrine of common-law premises liability cannot be used to avoid a specific statutory duty. *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 720-721; 737 NW2d 179 (2007). "Therefore, if a negligence action is premised on the violation of a statute rather than on common-law principles of premises liability, the open and obvious danger doctrine will not apply." *Id.* at 721.

MCL 125.1504 provides, in relevant part:

(1) The director shall prepare and promulgate the state construction code consisting of rules governing the construction, use, and occupation of buildings and structures, including land area incidental to the buildings and structures, the manufacture and installation of building components and equipment, the construction and installation of premanufactured units, the standards and requirements for materials to be used in connection with the units, and other requirements relating to the safety, including safety from fire, and sanitation facilities of the buildings and structures.

(2) The code shall consist of the international residential code, the international building code, the international mechanical code, the international plumbing code published by the international code council, the national electrical code published by the national fire prevention association, and the Michigan uniform energy code with amendments, additions, or deletions as the director determines appropriate.

(3) The code shall be designed to effectuate the general purposes of this act and the following objectives and standards:

* * *

(e) To insure adequate maintenance of buildings and structures throughout this state and to adequately protect the health, safety, and welfare of the people.

While the objectives and standards of this statute include "insur[ing] adequate maintenance of buildings and structures throughout this state and . . . adequately protect[ing] the health, safety, and welfare of the people," MCL 125.1504(3)(e), the purpose of the construction code act, MCL 125.1501 *et seq.*,

is not to protect the public against harm . . . but merely to establish the authority . . . to "prepare and promulgate" a state construction code consistent with, and protective of, the "health, safety, and welfare of the occupants and users of

buildings and structures.” [*Rakowski v Sarb*, 269 Mich App 619, 628 n 4; 713 NW2d 787 (2006) (citations omitted).]

“[N]othing in that act gives rise to a civil duty to a private third party.” *Id.*

The language used by the Legislature in MCL 125.1504 is materially different from that used in statutes affirmatively imposing a duty, such as that found in MCL 554.139(1)(b) (a lessor of residential premises covenants to “keep the premises in reasonable repair . . . and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located”); in the public-building exception to governmental immunity, MCL 691.1406 (“[g]overnmental agencies have the obligation to repair and maintain public buildings under their control . . . [and] to take action reasonably necessary to protect the public against the condition”); and in MCL 691.1402(1) (requiring a “governmental agency having jurisdiction over a highway [to] maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel” and imposing a “duty [on] the state and the county road commissions to repair and maintain highways”).

This Court has stated that a violation of a building code may be some evidence of negligence. *Summers*, 206 Mich App at 52. However, “it is not in itself sufficient to impose a legal duty cognizable in negligence.” *Id.* “[E]ven in cases of code violations, the relevant inquiry remains whether any special aspects rendered the otherwise open and obvious condition unreasonably dangerous.” *Kennedy*, 274 Mich App at 720. The statute does not impose an independent duty, and the trial court did not err in granting summary disposition to defendants.

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Patrick M. Meter